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Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

Filed April 9, 1900.

No. 324.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF IN REPLY TO ARGUMENT OF OPPOSITE COUNSEL.

F. A. CRITZ,
R. C. BECKETT,
Of Counsel for Defendant in Error.

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IN THE

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vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Reply of F. A. Critz and R. C. Beckett to Brief of Opposite Counsel on the Merits.

BRIEF.

This case involves only more pointedly and more distinctively one point involved in all of the preceding cases, Nos. 244, 318, 319, and 320, in that while those cases all involved the State, county, and municipal taxes, this case involves the municipal taxes alone.

It is not the same property involved in any of those suits. The property involved here is in the city of Jackson and

other towns, and before the consolidation of that company on October 25, 1892, with the Louisville, New Orleans and Texas Railway Company belonged to the *original* Yazoo and Mississippi Valley Railroad Company. Since that consolidation the property has belonged to the *consolidated* or present Yazoo and Mississippi Valley Railroad Company. Hence the principles governing the attempt to collect the taxes from 1886–1892 can only be treated in the nature or relation of principles by *stare decisis*, while *the things* necessary to decide as to the taxes of 1892–1898 may be regarded as *res adjudicata*, if properly before the court, in that view; otherwise they, too, would be *stare decisis*.

In the case No. 244, now pending here, the municipal taxes were sued for in conjunction with the State and county taxes.

Record in No. 244, pp. 81, 105, 617, 628.

As to points already argued by us in the previous cases, we will not reiterate, but refer to the pages of our briefs in those cases.

FIRST.

In said case No. 244, the supreme court of Mississippi, where the parties were substantially the same as here, decide that sections 13 and 20 of article 12 of the constitution of December 1, 1869, absolutely prohibited the grant of exemptions such as the one here, for, as above shown, that case also embraced municipal taxes. It would be difficult to add anything to the force of their opinion. It is in that Record No. 244, pp. 659–671.

SECOND.

That applies to all taxes from 1886–1898. The court also in that opinion decide that the consolidation of October, 1892, created a new company and no exemption passed into

it. (See their exhaustive opinion in Record No. 244, pp. 638–659, 686).

That applies to all taxes from 1892–1898.

THIRD.

In that opinion it is also decided that all exemptions were repealed by the Laws of 1886, page 23, and Code of 1892.

Record in No. 244, pp. 671–673, 686, 687.

Those constructions of the constitutions and laws of Mississippi are conclusive on this court, and it only remains to be seen whether they impair the obligation of any contract to exempt the property in controversy in Jackson and the other towns from municipal taxation for said years 1886–1898, and on this point we say:

FOURTH.

So far as any claim may be advanced that a collection of taxes here would violate section 1 of the fourteenth amendment, it is sufficient to say that for taxation for the years 1892–1898 the assessments were made by the regular assessing board, and there can be no color for any claim that this violates the fourteenth amendment, else it would be impossible ever to assess anything anywhere or at any time.

So far as the back taxes are concerned, that said assessment violates no provision of the fourteenth amendment is decided by the State supreme court in a case having substantially the same parties as here, and as the statute under which this assessment was made expressly provides for notice and a hearing, there could be no color for any claim of a violation of the fourteenth amendment. The State court in its opinion collates the cases in this court on that subject.

Opinion of the court in No. 9358, filed in No. 319 here.

Also, Y. & M. V. R. R. Co. *vs.* Adams, 73 Miss., 662, 663.

And so far as the overruling of its former opinions by the State court is concerned, this is a writ of error to the State court, which only lies on Federal questions, and this court has many times decided that such action by the State court presents no Federal question. The distinction is explained in Central Land Co. *vs.* Laidley, 159 U. S., 109–112, which seems to be now regarded by this court, from their uniform subsequent reference to it, as the leading case on that subject.

See also Hansford *vs.* Davis, 163 U. S., 278.

FIFTH.

As to the back taxes, the State court has also expressly decided that, the assessment being made on summons, notice, and a regular hearing, the action of the assessing board in determining the liability to taxation is a judicial function, and that the decision is *res adjudicata* and cannot be attacked collaterally, but only by certiorari, and they sustain this position by numerous authorities.

Opinion in No. 9358, on file in No. 319 here.

Also our brief on motion to dismiss in No. 318, pp. 43, 44.

And this court has decided that a decision of a State court as to whether a decision by one of its own tribunals is *res adjudicata* raises no Federal question.

N. Pac. R. R. Co. *vs.* Patterson, 154 U. S., 132–134.

The authorities on this point are collected in our briefs on the motions to dismiss in No. 318, p. 43; No. 320, p. 32, and our big brief on the merits in case No. 244, pp. 43, 44.

SIXTH.

As to Subsequent Laws.

The laws under which the revenue agent is proceeding in this case are sections 3875–3886 of the Code of 1892 and the revenue agent act of 1894, in Laws of 1894, pp. 29–31.

We do not think that under the later and well-considered opinions of this court that these can be justly regarded as subsequent laws, tending or having any tendency to impair a contract. (See our views and the decisions of this court in our brief on the motions to dismiss or affirm in No. 318, pp. 30–37, where the subject is fully discussed.)

SEVENTH.

The charter in the case at bar (see brief of opposite counsel, pp. 1, 2) was granted on February 17, 1882, after the decision in the case of Mississippi Mills *vs.* Cook (56, p. 40), holding all exemptions to be repealable, and hence the decision of the court above referred to, holding all exemptions repealed by the laws of 1882 and Code of 1892, could create no color of a Federal question. So far as innocent purchaser or back taxes are concerned, no Federal question is or can be raised. For our reasons and authorities see our brief on the motion to dismiss or affirm in No. 318, p. 37, and also our joint brief in the three cases Nos. 318, 319, and 320, pp. ——. 15=24

And in the late case of Houston & Texas Central Railroad Co. *vs.* The State of Texas, No. 81, decided March 26, 1900, this court, in their printed opinion in the clerk's office, on pages 23, 24, say that where anything forbidden by the Constitution is attempted, it is void and not merely voidable, and is not binding, and that was a litigation where past transactions, like back taxes, were attempted to be opened up.

We also call the attention of this court particularly to this case, in answer to the claims in No. 319 and 320 that the receipts when obtained from the sheriffs and tax collectors were an estoppel on the State. The distinction is that in the Texas case the warrants had actually been received, and this court on page 24 of that opinion say that if the warrants had been *unconstitutional* it would have been no payment, while here in said cases the officers refused to give the receipts.

EIGHTH.

So far as there being any special scheme of taxation amounting to a contract to collect in that particular way, we have shown in our brief on the motion to dismiss in No. 318, p. 38, that no one can have a vested right in the mode or manner of the collection of its taxes by the State where he has no additional or other taxes to pay, but the answer here is that there was no particular way or scheme to collect the town taxes. Opposite counsel refer to a Georgia case where, in a particular scheme of taxation, this court held, not that the property in controversy was exempt from taxation (see brief of opposite counsel on page 22), but that the statute provided no method of collecting the town taxes and hence they could not be collected in that suit. But we will show under the next head that a way was provided to collect town taxes here, and hence the Georgia case has no application for both of those reasons.

NINTH.

But if this court should see proper to take jurisdiction, you are bound either to follow your previous decisions and hold that under sections 13 and 20 of article 12 of the Mississippi constitution of December 1, 1869, the exemption claimed was void *ab initio*, as held in Louisville *vs.* Palmes, 109 U. S., 248; St. Louis, &c., *vs.* Berry, 113 U. S., 475;

Schurz *vs.* Cook, 148 U. S., 408, and Keokuk *vs.* Mo., 152 U. S., 303, 310–312, and many other cases cited by the State court in its opinion in said case No. 244 here, on page 662 of that record, or else you are bound to hold that it was a repealable exemption, as the Mississippi Mills case did establish in 1878, before this charter was granted in 1882, on a test case, the exact and identical point that the legislature could repeal exemptions granted after the adoption of the constitution of December 1, 1869.

Under the first holding that would end this case and affirm it.

Under the second holding the court would determine, independently and for itself, whether this exemption had been repealed, though for the life of us we cannot see where a Federal question would come in, even if the court should find that it had been repealed.

1st. It was clearly unconstitutional, for besides the reasons given by the State court in the opinion in No. 244, *supra*, these are municipal taxes, and section 14 of article 12 of the constitution of December 1, 1869, prohibits the legislature from authorizing counties or towns to lend their credit or subscribe to railroads. On this point see our brief on the motions to dismiss or affirm in No. 320 here, on pages 48–50.

Now, it has been decided both by the supreme court of Mississippi and by this court that this section and sections like it prohibited *donations* as well as subscriptions to capital stock.

N. O., &c., R. R. Co. *vs.* McDonald, 53 Miss., 240, 245.

The legislature could have authorized the city of Jackson to donate its bonds or the taxes for twenty years or any other legal consideration, but on the consent only of a majority of two-thirds of the qualified voters at an election.

Here the defendant, plaintiff in error here, pleaded that

the city of Jackson passed an ordinance releasing the road from taxation for twenty years, but that ordinance lacked the consent of any voters at any election, and it seems too plain for argument that if the legislature could not directly authorize the city of Jackson to grant the exemption without the consent of its voters they could not indirectly grant the exemption themselves. On this point see their brief, p. 3.

2d. The exemption was clearly repealed. It was granted February 17, 1882, and in 1884 the legislature, in an act amending the Code of 1880, by substitution, enacted sections 1 and 2 in lieu of sections 607 and 608 of the Code of 1880. Said sections provide for a privilege tax on railroads and re-enacted section 606 of the Code of 1880.

Now, section 606 of the Code of 1880 expressly provides that municipalities may tax railroads. In the Lambert case, in 70 Miss., it is expressly held that the Code of 1880 repealed all exemptions, and also by the court in No. 244. (See their opinions, pp. 671–673, 685, 686.)

In the revenue law of 1884 there is a provision reserving exemptions as to State and county taxes in section 2, but none whatever as to municipal taxes. (See Laws of 1884, pp. 29–31, sections 1 and 2.)

And neither in the "Laws of 1886," p. 23, nor the "Laws of 1890," pp. 12, 13, nor in the Code of 1892, nor since, is there the least pretense or effort to revive exemptions as to municipalities. Code of 1892 § 3880.

In fact, section 183 of the constitution of 1890 absolutely thereafter prohibits subscriptions or donations to railroads by cities and counties, and also section 192 of said constitution referred to by opposite counsel and copied in the Appendix "D," p. III, of their brief.

So that if the exemption was repealable it was repealed by said act of 1884, and also by sections 183 and 192 of the constitution of November 1, 1890, and if repealed by the

act of 1884 the provision in section 181 of the constitution of 1890, preserving *legal* exemptions, had no application to it, and we do not think that section 181 would even qualify or restrain the operation of sections 183 and 192 as to future taxes.

For further argument see brief of associate counsel on motion.

F. A. CRITZ,

R. C. BECKETT,

Of Counsel for Defendant in Error, Wirt Adams.

Supreme Court of the United States.

No. 80.—October Term, 1900.

The Yazoo and Mississippi Valley Railroad Company, et al., Plaintiffs in Error, *vs.* Wirt Adams. } In error to the Supreme Court of the State of Mississippi.

[January 7, 1901.]

This was an action begun in the Circuit Court of Hinds County, Mississippi, by Adams, as State revenue agent, suing for the use and benefit of certain cities and towns through which the defendant railway runs, to recover municipal taxes upon its property for the years 1893 to 1896, inclusive.

A demurrer to the declaration having been sustained upon the ground that the exemption claimed by defendant in its charter was perpetual and unconditional as to the municipal taxes, an appeal was taken to the Supreme Court which reversed the action of the Circuit Court, and remanded the case for a new trial. (75 Miss. 275.) An amended declaration having been filed claiming taxes from 1886 to 1897 inclusive, defendant interposed pleas (1) of the general issue; (2) that defendant was organized under an act of February 171, 883, containing the following provision in section 8: "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi River, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the treasurer of this State and paid into the State treasury, to be dealt with as the legislature may direct; *but said company shall be exempt from taxation by cities and towns;*" that the railroad was completed to the Mississippi River, October 25, 1892, by a consolidation with the Louisville, New Orleans and

Texas Railway Company, which had constructed and was then the owner of certain branches which reached the Mississippi River at several different points; (3) that after the company was organized, but before its line was finally located and constructed, the municipal authorities of the city of Jackson adopted an ordinance releasing the road from all city taxation for twenty years from date, provided it selected Jackson for its southeastern terminus, and provided further that the work on said road be commenced within one year and be completed within three years to Yazoo City; and that such ordinance was accepted and complied with by the defendant; (4) that, prior to the assessment of these taxes, defendant leased its road to the Illinois Central for a term of fifty years, which, until the bringing of this suit held and operated such road under such lease; that by its terms the Illinois Central agreed to pay and discharge all taxes assessed upon the defendant company; that under defendant's charter it was exempted from all municipal taxation; that the right of the legislature to make such exemption had been judicially recognized in the case of *Mississippi Mills* v. *Cook*, (56 Miss. 40,) and that such exemption entered into and constituted a part of the aforesaid lease, and of the charter contract between the defendant and the State; and that "the said exemption, by said charter conferred, has never been repealed by the legislature of said State," but that during the four years named the legislature refused to pass bills introduced to repeal such exemption.

A new trial resulted in a verdict for the plaintiff, which was affirmed by the Supreme Court. (76 Miss. 545.) Hence this writ of error.

Mr. Justice BROWN delivered the opinion of the Court.

Motion is made to dismiss for the want of a Federal question. The ground of the motion is that, while the second and fourth pleas set up the exemption contained in the charter from all municipal taxation, and the third pleads the exemption from city taxation by the ordinance of the mayor and aldermen of the city of Jackson, and inferentially, at least, that these constitute a contract under which the road was built, there is not only no averment that this contract had been impaired by subsequent legislation, but no discussion of the case in that aspect by the Supreme Court, which held that under a proper construction of the charter the railroad company is not entitled to an exemption from municipal taxation, because the road had never been completed to the Mississippi River. There was undoubtedly legislation both before and subsequent to the charter of this company, February 18, 1882, authorizing municipalities to impose taxes, but no allusion to them is made either in the pleadings, proofs or in the opinion of the Supreme Court.

The case then resolves itself into this: whether jurisdiction can be sustained when the only question involved is the construction of a charter or

contract, although it appear that there were statutes subsequent thereto which might have been, but were not, relied upon as raising a Federal question concerning the construction of the contract. There is no doubt of the general proposition that, where a contract is alleged to have been impaired by subsequent legislation, this court will put its own construction upon the contract, though it may differ from that of the Supreme Court of the State. The authorities upon this point are very numerous, but they all belong to a class of cases in which it was averred that, properly construed, the contract was impaired by subsequent legislation; but, if the sole question be whether the Supreme Court has properly interpreted the contract, and there be no question of subsequent legislative impairment, there is no Federal question to be answered. (*Lehigh Water Co.* v. *Easton*, 121 U. S. 388.)

To sustain our jurisdiction under the second clause of R. S. sec. 709, relied upon here, there must be drawn in question the validity of a State statute upon the ground of its being repugnant to the Constitution or laws of the United States; but of what State statute is the validity attacked in this case? None is pointed out in the record; none set up in the pleas; none mentioned in the opinion of the court. In fact, in the fourth plea it is expressly averred that "the exemption by said charter conferred has never been repealed by the legislature of the State;" and we are only asked to infer that certain statutes describing in detail methods of municipal taxation did in fact impair the obligation of the chartered contract. But are we bound to search the statutes of Mississippi to find one which can be construed as impairing the obligation of the charter? It is true that, in the first assignment of error in this court, it is averred that the Supreme Court of the State erred in rendering its judgment, whereby the tax provisions of the Annotated Code of 1892, providing for the office of revenue agent, and chapter 34 of the Laws of 1894, defining the powers of that office, "were given effect against the contract rights of the plaintiffs in error," contrary to the contract clause of the constitution; but no mention is made of this in the assignments of error filed in the Supreme Court of the State, which were of the most general description, and no allusion is made to the Code of 1892 or of the act of 1894 in the opinion of the court.

There is a laxity of pleading, in failing to set up the subsequent law impairing the obligation of the contract, which ought not to be encouraged. Granting that, as the case arose under the second clause of R. S. sec. 709, the invalidity of the statute need not be "specially set up and claimed," it must appear under the most liberal construction of that section that it was necessarily involved, and must indirectly, at least, have been passed upon in the opinion of the Supreme Court; but, for aught that appears, the very statutes under which this road was taxed were in existence before the road was chartered, although others, prescribing a different method of as-

sessing and collecting such taxes, may have been passed subsequent thereto This subsequent legislation, however, may have had, and apparently di have, nothing to do with the disposition of the case.

Three recent cases in this court are pertinent in this connection. I *Central Land Co.* v. *Laidley*, (159 U. S. 103,) an action of ejectmer was brought by Laidley against the land company in a court of We Virginia. The case turned upon the defectiveness of a wife's acknowledg ment to a deed of land. The Court of Appeals of Virginia, prior to th organization of the State of West Virginia, had in several cases held tha acknowledgments in this form were sufficient; but the Court of Appeal of West Virginia in this case held it to be insufficient, and the change the settled construction of the statute was charged as an impairment the contract. This court held that under the contract clause of the Co stitution, not only must the obligation of the contract be impaired, but must have been impaired by some act of the legislative power of th State and not by decisions of the judicial department only. "The appe late jurisdiction of this court," said Mr. Justice Gray, "upon writ of erro to a State court, on the ground that the obligation of a contract has bee impaired, can be invoked only when an act of the legislature alleged to b repugnant to the Constitution of the United States has been decided b the State court to be valid, and not when an act admitted to be valid ha been misconstrued by the court. The statute of West Virginia is admitte to have been valid, . . . and it necessarily follows that the questio submitted to and decided by the State court was one of construction onl and not of validity." It was said by Mr. Justice Miller in *Knox* v. *E change Bank*, (12 Wall. 379, 383): "We are not authorized by th judiciary act to review the judgments of the State courts because the judgments refuse to give effect to valid contracts, or because those judg ments, in their effect, impair the obligation of contracts. If we did, ever case decided in a State court could be brought here, where the party se ting up a contract alleged that the court had taken a different view of i obligation to that which he held."

So also in *Turner* v. *Wilkes County Commissioners*, (173 U. S. 461,) was said that "this being a writ of error to a State court, we cannot tak jurisdiction under the allegation that a contract has been impaired by decision of that court, when it appears that the State court has done noth ing more than construe its own constitution and statutes existing at th time when the bonds were issued, there being no subsequent legislatio touching the subject." In this case, too, the plaintiff in error sought take advantage of a change of judicial construction by the Supreme Cou of the State, which had held that the bonds were void, because the ac under which they were sued were not valid laws, not having been passe in the manner directed by the constitution.

The case of the *Yazoo Railroad Co.* v. *Thomas*, (132 U. S. 174,) is much relied upon by the plaintiff in error, and is claimed to be full authority for the maintainance of the writ in this case. This was a bill by the plaintiff in error in the case under consideration to enjoin a collection of taxes upon its property. "The illegality complained of was that the tax was in violation of the company's charter, by which it was insisted the property of the company incident to its railroad operations was exempted from taxation; and it was averred that the charter, as respects the exemption claimed, was a contract irrevocable, and protected by the contract clause of the Constitution of the United States; *that the unwarranted application of the general laws subsequently passed*, as well as the application of the general laws in force at the time, is equivalent to a direct repeal of the charter exemption; that it is an effectual abrogation of its privilege of exemption by means of authority exercised under the State." Not only does it appear from the opinion that the taxes in question were assessed under an act passed in 1888, subsequent to the charter, but on reference to the original bill, which we have consulted for that purpose, we find that this act of April 3, 1888, was specially set up and pleaded in the bill, and was charged to be a violation of the charter contract, which exempted the orator's road from taxation, and that such application of said act was the same as a repeal or revocation of the granted exemption, and therefore in violation of the Constitution of the United States forbidding such violation. In other words, the bill in that case not only pointed out the exemptions contained in the plaintiff's charter, but also set up the subsequent statute, which it was contended impaired the obligation of that contract. The bill thus contained the allegation which is wanting in this case, and put it in the power of this court to say whether the contract set up in the bill had been properly construed by the State court. This was also the case in *Water Power Co.* v. *Street Railway Co.*, (172 U. S. 475,) and *McCulloch* v. *Virginia*, (172 U. S. 102.)

If jurisdiction in this case be sustained, it results that whenever a State court gives a certain construction to a contract, it is our duty to search the subsequent statutes and to find out whether there be one which, under a different construction of the contract, may be held to impair it. We must decline the obligation. As was said by the Chief Justice in *Powell* v. *Brunswick County*, (150 U. S. 433, 440): "If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved, so that the State court could not have given judgment without deciding it, that will be sufficient; but resort cannot be had to the expedient of importing into the record the legislation of the State as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon

in arriving at conclusions upon the matters actually presented and considered." See also *Louisville & Nashville Railroad Co.* v. *Louisville*, (166 U. S. 709, 715.)

It is true that the Chief Justice of the Supreme Court certifies that upon the argument of this case the validity of legislation of the State of Mississippi subsequent to the statute of February 18, 1882, was drawn in question by the company upon the ground of its repugnancy to the Constitution of the United States; but we have repeatedly held that such certificate is insufficient to give us jurisdiction where it does not appear in the record, and that its office is to make more certain and specific what is too general and indefinite in the record. (*Lawler* v. *Walker*, 14 How. 149 *Gross* v. *United States Mortgage Co.*, 108 U. S. 477.) It is said in Lawler's case that "the statutes complained of in this case should have been stated. Without that the court cannot apply them to the subject matter of the litigation to determine whether or not they have violated the Constitution or laws of the United States." See also *Railroad Co.* v. *Rock*, (4 Wall. 177;) *Parmelee* v. *Lawrence*, (11 Wall. 36;) *Powell* v. *Brunswick County*, (150 U. S. 143,) and cases cited.

The writ of error is therefore *Dismissed.*

True copy.

Test:

Clerk Supreme Court, U. S.